IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	Customer Number: 46320
	:	
Velda BARTEK, et al.	:	Confirmation Number: 7782
	:	
Application No.: 10/754,375	:	Group Art Unit: 2173
	:	
Filed: January 9, 2004	:	Examiner: N. Ulrich
	:	

For: DYNAMIC COMPOSITION OF HELP INFORMATION FOR AN AGGREGATION
      OF APPLICATIONS

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S

ANSWER dated October 15, 2008.

The Examiner's response to Appellants' arguments submitted in the Second Appeal Brief

of July 21, 2008 (hereinafter the Second Appeal Brief), raises additional issues and underscores

the factual and legal shortcomings in the Examiner's rejection. In response, Appellants rely upon

the arguments presented in the Second Appeal Brief, and the arguments set forth below.

1   **REMARKS**

2

3   Appellants have compared the statement of the rejection found on pages 3-12 of the

4   Examiner's Answer with the statement of the rejection found on pages 2-10 of the Fourth Office

5   Action. Upon making this comparison, Appellants have been unable to discover any substantial

6   differences between the respective statements of the rejection. As such, Appellants proceed on

7   the basis that the Examiner's sole response to Appellants' Second Appeal Brief is found on pages

8   12-16 of the Examiner's Answer.

9

10   Non-Compliant Examiner's Answer

11   On page 5 of the Second Appeal Brief, Appellants pointed out where the Examiner's

12   Answer is required to include particular content discussed in M.P.E.P. § 1207.02, yet the

13   Examiner has completely ignored this requirement. As noted throughout the prosecution of this

14   application and in the Second Appeal Brief, the Examiner has failed to properly establish the

15   facts underlying the Examiner's analysis. Appellants' position is that these omissions in the

16   Examiner's prima facie analysis are correctable by the Examiner, and the correction of these

17   omissions would help both Appellants and the Honorable Board gain a better understanding of

18   the findings of facts and analysis employed by the Examiner in rejecting the claims. Thus,

19   Appellants respectfully recommend that the Honorable Board remand the present application to

20   the Examiner to address these omissions.[1]

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[1] The Board has persistently declined to uphold an Examiner because of omissions in the Examiner's half of the
record. E.g., Ex parte Daleiden, Appeal 2007-1003 (Mar. 14, 2007) (remanding because examiner failed to respond
to arguments in the Appeal Brief); Ex parte Rozzi, 63 USPQ2d 1196, 1200-03 (BPAI 2002) (remanding without
decision because of a host of examiner omissions and procedural errors); Ex parte Gambogi, 62 USPQ2d 1209, 1212
(BPAI 2001) ("We decline to tell an examiner precisely how to set out a rejection."); Ex parte Jones, 62 USPQ2d
1206, 1208 (BPAI 2001) (refusing to adjudicate an issue that the examiner has not developed); Ex parte Schricker,

1

2   <u>Rejection of claim 1 under 35 U.S.C. § 102</u>

3   In response to Appellants' arguments found on page 7, line 3 through page 9, line 3 of the

4 Second Appeal Brief, the Examiner asserted the following in the first full paragraph on page 13

5 of the Examiner's Answer:

6   As indicated in the above argument, the examiner is relying on Fig 5 and Column 5 line
7   49 — Column 6 line 36 of Hickman. Within this cited passage, Hickman clearly discloses a screen
8   display with a set of windows that may be displayed as the user invokes multiple application. Also
9   discussed is displaying the integrated help utility (BOOK-CASE) along with the application
10   windows. <u>As shown in Fig 5, the application windows and integrated help utility are all
11   aggregated together on the display screen.</u> The reference between Fig 5 of Hickman and Fig 3 of
12   the present invention was to help show the similarities between the two figures. It is not at all fully
13   relied upon by the Examiner to teach the limitation. The cited passage describes what is shown in
14   Fig 5 and teaches separate interface units (application 1, application 2, and help utility) aggregated
15   together (collection of units into a body). (emphasis added)
16

17 As noted on page 9, lines 1-3 of the Second Appeal Brief, the Examiner has failed to provide a

18 claim construction for the phrases at issue. For example, claim 1 recites "separate interface units

19 aggregated together into a single aggregated view" and "a composition of help documents

20 corresponding to said single aggregated view."

21

22   "Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The

23 first step in both analyses is a proper construction of the claims. ... The second step in the

24 analyses requires a comparison of the properly construed claim to the prior art." <u>Medichem, S.A.</u>

25 <u>v. Rolabo, S.L.</u>, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted). Therefore, the

26 Examiner must (i) identify the individual elements of the claims and properly construe these

27 individual elements, <u>see also,</u> <u>Panduit Corp. v. Dennison Mfg. Co.</u>, 810 F.2d 1561, 1567-68 (Fed.

56 USPQ2d 1723, 1725 (BPAI 2000) ("The examiner has left applicant and the board to guess as to the basis of the rejection ... We are not good at guessing; hence, we decline to guess."); <u>Ex parte Braeken</u>, 54 USPQ2d 1110, 1112-13 (BPAI 1999) (noting that the appeal is "not ripe" because of omissions and defects in the examiner's analysis).

1   Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what

2   is the invention claimed?" since "[c]laim interpretation, . . . will normally control the remainder

3   of the decisional process"); see Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997)

4   (requiring explicit claim construction as to any terms in dispute), and (ii) identify corresponding

5   elements disclosed in the allegedly anticipating reference and compare these allegedly

6   corresponding elements to the individual elements of the claims. Lindermann Maschinenfabrik

7   GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). By

8   failing to provide an explicit claim construction for these claim limitations at issue, the Examiner

9   has committed error by not properly evaluating the claimed invention.

10

11   Notwithstanding the Examiner's failure to provide a proper claim construction for the

12   terms at issue, the Examiner's above-reproduced response merely asserts, without substantive

13   analysis or factual support that "[a]s shown in Fig 5, the application windows and *integrated help*

14   *utility* are all aggregated together on the display screen" (emphasis added). The Examiner's

15   analysis neglects to consider the actual language of the claims.

16

17   As recited in claim 1, "separate interface units aggregated together into a single

18   aggregated view" and "a composition of help documents corresponding to said single aggregated

19   view." Fig. 5 does not describe that Bookcase Help is a *composition of help documents*.

20   Referring to column 5, lines 63-65, the "Bookcase" is another name for the "integrated help

21   utility" described throughout Hickman.[2]

22

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[2] See also the legend associated with feature 340 of Fig. 3, which describes the bookcase as being an integrated help
utility.

1   Of particular note is the description found in column 4, lines 40-51 of Hickman and

2   reproduced below:

3   Integrated help utility 340 uses the help file directories 313 and 323 to display a hierarchical and
4   integrated listing of help file topics from multiple applications (i.e. application 310 and application
5   320). In this manner, help file topics resident in application 320 may be viewed while a user is
6   executing application 310. Help file topics provided in help files 312 may also be viewed while a
7   user is executing application 320. Help files of a particular application may also be viewed even
8   though the application is not active. The integrated help utility 340 of the present invention
9   provides a level of help file integration not provided in prior art systems.
10
11   Referring to Fig. 3 of Hickman, the integrated help utility (Bookcase) 340 is not a composition of

12   help files 312, 322, as asserted by the Examiner. Instead, as described in the above-reproduced

13   passage, the integrated help utility 340 "uses the help file directories 313 and 323 to display a

14   hierarchical and integrated listing of help file topics from multiple applications." Although each

15   help file 312, 322 may be viewed with the help of the help viewer 330, the help files 312, 322 are

16   not directly associated with the integrated help utility 340. Thus, the Examiner has failed to

17   properly characterize the teachings of Hickman. Moreover, as clearly shown in Fig. 3, the help

18   files 312, 324 are not sent to the integrated help utility (bookcase), and thus, the bookcase cannot

19   be a composition of the help documents, as claimed.

20

21   _____

22   In response to Appellants' arguments found on page 9, lines 5-14 of the Second Appeal

23   Brief, the Examiner asserted the following in the paragraph spanning pages 13 and 14 of the

24   Examiner's Answer:

25   Applicant further provides an example, see pg 9 lines 5-14 as to why Hickman fails to
26   show applications aggregated together. The examiner understands how the windows can appear to
27   separate but would like to stress that that the examiner is interpreting aggregated application as
28   multiple application displayed simultaneously on the display. The examiner must interpret the
29   claims by there broadest meaning. The definition of aggregate is to bring together or to combine
30   and form a collection. As known by those skilled in the art, there are displays that are only able to
31   display one application window at a time, therefore, a first window completely blocking or
32   obscuring a second window. These kinds of displays cannot aggregate the application to
33   simultaneously display multiple applications on the display. As evident by Hickmans' invention,

1   multiple applications along with the help utility can be simultaneously displayed thus aggregated
2   (brought together or combined to form a collection) on the display.
3
4   At the outset, Appellants note that the Examiner does not refute any of Appellants' arguments

5   presented on page 9, lines 5-14 of the Second Appeal Brief. Instead, the Examiner relies upon a

6   non sequitur.[3]   Specifically, the Examiner states that "there are displays that are only able to

7   display one application window at a time" and "[t]hese kinds of displays cannot aggregate the

8   application to simultaneously display multiple applications on the display."   From these

9   premises, the Examiner concludes that "multiple applications along with the help utility can be

10   simultaneously displayed thus aggregated" (emphasis added).

11

12   The Examiner's analysis suffers from multiple fatal flaws. To paraphrase the Examiner's

13   logic, using a different context, the Examiner is asserting that "since pigs cannot fly, and a horse

14   is not a pig, then horses can fly." Specifically, the Examiner is assuming that since a single

15   display "cannot aggregate the application to simultaneously display multiple applications on the

16   display" and Hickman can simultaneously display multiple applications and the help utility then

17   they are aggregated. The simultaneously display of multiple independent[4] applications does not

18   correspond to these displays being aggregated.

19

20   Notwithstanding, the Examiner's logical fallacy, the Examiner is relying upon an

21   incorrect premise (i.e., a finding of fact). Specifically, the Examiner asserts that "there are

22   displays that are only able to display one application window at a time" and "[t]hese kinds of

23   displays cannot aggregate the application to simultaneously display multiple applications on the

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[3] A non sequitur is an argument where its conclusion does not follow from its premises.
[4] See arguments on page 9, lines 11-12 of the Second Appeal Brief.

1   display." However, this is precisely what a "portal" with "portlets" provides with well known

2   examples being http://www.google.com/ig and http://www.cnn.com.

3

4   Not only has the Examiner made an erroneous finding of fact, the Examiner is ignoring

5   the language of the claims. The claim language at issue does not recite the simultaneous display

6   of multiple applications. In fact, claim 1 does not even refer to displaying applications. Instead,

7   the language at issue refers to "at least two separate help documents" and corresponding

8   "separate interface units aggregated together into a single aggregated view." Thus, the display of

9   multiple applications (aggregated or not) is immaterial to the claimed limitations.

10

11   As also claimed, the separate help documents are combined "into a composition of help

12   documents corresponding to said single aggregated view." The Examiner, however, has failed to

13   establish that Hickman teaches the claimed "a single aggregated view" and "a composition of

14   help documents corresponding to said single aggregated view." Therefore, Appellants maintain

15   that the Examiner has erred in rejecting claim 1 under 35 U.S.C. § 102 for anticipation based

16   upon Hickman.

17

18

19   <u>Claim 3</u>

20   In response to Appellants' arguments found on page 10, line 7 through page 12, line 2 of

21   the Second Appeal Brief, the Examiner initially asserted the following in the last full paragraph

22   on page 14 of the Examiner's Answer:

23   In response to applicant arguments regarding claims 3 and 13, the examiner respectfully
24   disagrees. Applicant argues that Hickman fails to disclose all the limitation of dependent claims 3
25   and 13. Applicant goes on further to argue that the subject matter of dependent claims 3 and 13

recites that at least three views are rendered, (i) the composition of help documents and (ii)/(iii) individual views. In no way does this limitation require that there be three views rendered on the screen. If anything, the claims recite at least two views, a view of said composition of help documents and a view of help documents.

The Examiner's analysis <u>ignores</u> the <u>plain</u> language of claim 3, which recites "rendering both a view of said composition of help documents, and individual view<u>s</u> of said separate help documents" (emphasis added). By referring to the view<u>s</u> (i.e., multiple views) of the separate help documents, Appellants position is that one having ordinary skill in the art would recognize that at least three views would be shown: (i) the composition of help documents and (ii)/(iii) the individual views of the separate help documents. Thus, the Examiner's anticipation analysis is burdened by an improper claim construction.

The Examiner's remaining analysis on pages 14 and 15 as to claim 3 is another example of poorly reasoned and factually unsupported analysis. After citing several passages within Hickman, the Examiner concludes on page 15 as follows:

Hickman is clearly teaching displaying the integrated help utility (which allows selection of topics by the user) and the help viewer (which displays help information from multiple applications) in a single window on the display, thus teaching the claimed limitation rendering both a view (two views) of composition of help documents and separate help documents.

The Examiner asserts that Hickman displaying "the integrated help utility and the help view ... in a single window on the display" corresponds to the claimed limitations at issue (i.e., the display of the composition of help documents and the individual views). The Examiner somehow believes that the "integrated help utility" and "help viewer" are two separate views. However, these two separate views are not illustrated in Fig. 5, which is not surprising because the help utility is the logic that invokes the help viewer and is not a separate view.

8

1   As already discussed above with regard to column 4, lines 40-51 of Hickman, the

2 integrated help utility 340 "uses the help file directories 313 and 323 to display a hierarchical and

3 integrated listing of help file topics from multiple applications." Reference is also made to

4 column 6, lines 55-63 of Hickman, which is reproduced below:

> 5 The file identifier and file index so extracted is formatted into a context string compatible with
> 6 help viewer 330 illustrated in FIG. 3. This context string that uniquely identifies the location of the
> 7 selected help information is transferred to help viewer 330 by integrated help utility 340 on line
> 8 342 as illustrated in FIG. 3. In a conventional manner, help viewer 330 accesses the specified help
> 9 information and displays the information on display system 343.

10
11 As evident from this passage, the help view 330 and help utility 340 are not two separate views,

12 as asserted by the Examiner. Instead, the help utility 340 creates data, which is passed along to

13 help view 330, which "accesses the specified help information and displays the information on

14 display system 343."

15

16   Even *assuming arguendo* that the "integrated help utility" and "help viewer" are two

17 views, the Examiner has failed to establish that Hickman teaches that one view displays the

18 composition of help documents and the other view displays "individual views of said separate

19 help documents." Moreover, as already noted above, a <u>proper</u> claim construction yields the

20 conclusion that at least three views are rendered, yet the Examiner has only alleged only two

21 views being rendered. Therefore, for the reasons presented above, Appellants maintain that the

22 Examiner has failed to establish that Hickman identically discloses the claimed invention, as

23 recited in claim 3, within the meaning of 35 U.S.C. § 102.

24

25

26

1 <u>Claim 7</u>

2 In response to Appellants' arguments found on page 12, line 5 through page 13, line 16 of

3 the Second Appeal Brief, the Examiner initially asserted the following in the paragraph spanning

4 pages 15 and 16 of the Examiner's Answer:

> 5 In response to applicant arguments regarding claim 7, the examiner respectfully
> 6 disagrees. Applicant argues that "help invoking logic" disposed in the single aggregate view is that
> 7 the logic is contained within the view. As explained by the examiner in the above arguments,
> 8 Hickman teaches aggregating multiple applications and the integrated help utility in the display.
> 9 As taught by Hickman in col. 5 lines 58-60, is the ability to invoke help from a menu selection
> 10 provided at the top of the display screen. Further, Hickman teaches in col. 6 lines 37-47 the ability
> 11 for a user to select a particular help topic for viewing. Therefore, since the user is given the ability
> 12 to invoke help from a menu displayed on the screen, the logic for invoking help is contained
> 13 within the view. Also Hickman teaches invoking particular help topics from the view, which still
> 14 teaches "help invoking logic coupled to said help system and disposed in said single aggregated
> 15 view".
> 16

17 The Examiner's "response" completely ignores the distinction being argued. Specifically, as

18 argued on page 13, lines 10-14 there is a difference between "invoking help" from a single

19 aggregated view and "help invoking logic" being disposed in the single aggregate view. This

20 difference is reflected in the actual language of the claim, which recites "help invoking logic

21 <u>coupled to</u> said help system <u>and</u> <u>disposed in</u> said single aggregated view." Being "coupled to"

22 does not automatically correspond to being "disposed in." Otherwise, Appellants' claim

23 language would be redundant.

24

25 For example, a server may compile a page that is sent to a client for display. This page

26 may or may not include the logic associated with a particular GUI (e.g., a button). If the logic is

27 not found within the page, a response is sent to the server, which processes the response using

28 logic within the server. Thus, although the logic is coupled to the page, the logic is not

29 necessarily (i.e., inherently) "disposed in" the single aggregated document.

30

1   Therefore, for the reasons submitted above, Appellants maintain that the Examiner has

2   failed to establish that Hickman identically discloses the claimed invention, as recited in claim 7,

3   within the meaning of 35 U.S.C. § 102.

4

For the reasons set forth in the Second Appeal Brief, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 102, 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: December 15, 2008

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